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The 9th February, 1973

No. 1147-4Lab-73/4866.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Lakshmi Rattan Engineering Works Ltd., Faridabad.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Application No. 28 of 1972 under Section 33-A
of the Industrial Disputes Act, 1947

Between

SHRI RAM KISHAN WORKMAN AND THE MANAGEMENT OF M/S LAKSHMI RATTAN
ENGINEERING WORKS LTD, FARIDABAD

Present.—Shri Onkar Parshad, for the workman.

Shri R.C. Sharma, for the management.

AWARD

The facts relevant for the disposal of this complaint under section 33-A of the Industrial Disputes Act, 1947, may briefly be stated as under :—

The management of M/s Lakshmi Rattan Engineering Works Ltd, Faridabad, had laid off its workmen and they had raised a dispute which was registered as Reference No. 3 of 1972. During the pendency of the said reference the management terminated the services of the present complainant Shri Ram Kishan Token No. 504 with effect from 21st October, 1972,—vide order dated 20th October, 1972. Feeling aggrieved, he brought the present complaint on 25th October, 1972, with the allegations that he had been working in this factory for the last about 13 years and the management had illegally placed him under suspension and then finally terminated his services without any justification and by way of victimisation and he was, therefore, entitled to be reinstated with back wages.

Notice of the complaint was given to the management and the same has been contested on several grounds giving rise to the following issues:—

- (1) Whether the complainant has no cause of action and the present complaint is not maintainable under section 33-A of the Industrial Disputes Act, 1947? (on respondent management).
- (2) Whether the suspension of Shri Ram Kishan complainant is justified? If not, with what effect? (on respondent management).
- (3) Whether the suspension of complainant Ram Kishan has been effected in contravention of the provisions of section 33 of the Industrial Disputes Act, 1947? If so, what relief is he entitled to?

The management has examined one witness Shri S. P. Misra, Store Supervisor M. W. 1. The workman concerned has examined 3 witnesses Hukam Chand W. W. 1, Shiv Sehay W. W. 2, Mahamood W. W. 3 besides making his own statement. The unanimous version given by the complainant and his witnesses is that since 1964 he had been supervising the work regarding the operation of hacksaw and grinding machines and that he had never operated these machines by hand himself. On the other hand, it has been urged on behalf of the management that he had never worked as Supervisor and since he had refused to operate the aforesaid machines he had been charge-sheeted and placed under suspension.

During the course of arguments in the case it has been stated on behalf of the management that on the assurance given by the union leader Shri Dewan Chand and the other workers including Satya Ram and Narain Dass, Shri Ram Kishan has been taken back on duty and he has been assigned the same work, he was doing before the impugned action of suspension from duty was taken against him. It has not been disputed on behalf of the workman that he has reported for duty in the factory although he has not given up his claim for the job of supervisor.

In view of the above it is no longer necessary to go into the issues involved in the case Shri Ram Kishan complainant had asked for two reliefs, reinstatement and back wages. The management having withdrawn the suspension order and taking him back on duty the first relief has automatically been granted to him. As per his own statement he has been drawing Rs 117 per mensem in all while the pay of the supervisor is Rs 210 per mensem basic besides the other allowances. But since his claim is confined to the wages of Rs 117 per mensem drawn by him before he was placed under suspension it is not necessary to go into the question as to whether he was entitled to higher wages of a supervisor or not in the present proceedings. Since, however, nothing solid has been brought on record to justify the order of his suspension and the management has admittedly withdrawn the order of its own accord by taking him back on duty presumably dropping the enquiry against him he would be entitled to his full wages for the period of his suspension as previously drawn by him.

The complaint is decided accordingly and the management is directed to pay him the difference of his wages in the light of my above observations.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 30th January, 1973.

No. 102, dated 31st January, 1973

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required by section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 30th January, 1973.

The 19th February, 1973

No. 1405-4Lab-73/5516.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Lakshmi Rattan Engineering Works Limited, Faridabad.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Application No. 27 of 1972, under Section
33-A of the Industrial Disputes Act, 1947.

Between

SHRI BALDEV RAJ WORKMAN AND THE MANAGEMENT OF M/S LAKSHMI RATTAN
ENGINEERING WORKS LTD, FARIDABAD

Present.—Shri Onkar Parshad, for the workman.

Shri R.C. Sharma, for the management.

AWARD

The facts relevant for the disposal of this complaint under section 33-A of the Industrial Disputes Act, 1947, may briefly be stated as under:—

The management of M/s Lakshmi Rattan Engineering Works Ltd., Faridabad, laid off its workmen who raised an industrial dispute registered as ID No. 3 of 1972. The present complaint was brought by Shri Baldev Raj a workman concern in the said dispute on 24th October, 1972, with the allegations that the management had served him with charge-sheet on 27th February, 1972, and he was also placed under suspension and an enquiry against him was started but the result of the enquiry was not communicated to him. It was further urged that as per his information the management had struck off his name from the muster rolls which was a contravention of the provisions of section 33 of the Industrial Disputes Act, 1947, since during the pendency of the said reference in which he was a workman concerned, no such action could legally be taken against him by the management.

With the above allegations in brief Shri Baldev Raj prayed that the management be directed to reinstate him with full back wages. Notice of the complaint was given to the management. It has not been denied that this workman was given the charge-sheet on 27th February, 1972, and enquiry against him was held. However, it has been pleaded that, as a matter of fact, no action has been taken against him on the basis of the said enquiry nor have his service been terminated on account of any charge of misconduct either connected with the said industrial dispute No. 3 of 1972 or otherwise. According to the management this workman had absented himself from duty and his name had, therefore, to be struck off the rolls as per the standing orders of the company and as such there was no contravention of the provisions of the law so as to attract the present complaint under section 33-A of the Industrial Disputes Act, 1947.

The following issue was framed.

Whether the management has terminated the services of the complainant in contravention of the provisions of section 33 of the Industrial Disputes Act, 1947? If so, what relief is he entitled to?

Shri Baldev Raj has made his own statement as W.W.1 while Shri R.C. Sharma, authorised representative of the management has appeared as M.W.1. The records of the enquiry proceedings have also been produced.

The case has been argued on both sides and I have given a careful consideration to the matter involved. As already observed the workman of this establishment had raised an industrial dispute (ID No. 3 of 1972) against the lay off resorted to by the management in which the present complainant Shri Baldev Raj was a workman concerned. That dispute is till pending adjudication. The impugned action in respect of which the present complaint has been filed is alleged to have been taken during the pendency of the said dispute. The question for determination, however, is whether the management has done anything to contravened the provisions of section 33 of the Act so as to attract the present complaint, as contemplated under section 33-A of the Act. On a close scrutiny of the facts on record, which are more or less admitted, the answer to the above question has to be in the negative. As would be clear from the pursual of the enquiry record and other documents filed in the case, read with the statement of Shri R.C. Sharma, authorised representative of the management, no action has been taken against this workman on the basis of the charge-sheet dated 27th February, 1972 or for that matter, as a result of the findings of the Enquiry Officer who has conducted the enquiry. The workman himself admits that the result of the enquiry has not been communicated to him.

As stated above, the plea raised by the management is that, as a matter of fact, this workman had absented himself from the factory for more than 8 days consecutively, without any proper authorisation resulting into the loss of lien on the posts held by him, and his name had, therefore, got to be struck off the rolls under the Certified Standing Orders of the Company. The above stand taken by the management appears to be unassailable on the showing of the workman himself. He was required to attend the factory every day even during the period of his suspension pending enquiry for which he was entitled to the payment of 50 per cent of his wages. It has been admitted by him in clear and unambiguous words in his cross examination that he had not gone to the factory after 27th June, 1972 nor is there anything on the record to suggest that he had taken any step to explain his absence within the period prescribed under the standing orders. His name had, therefore, to be struck off the rolls and his services stood automatically terminated on account of his own conduct and the management was not called upon to take any action against him.

From the facts stated above, it would be clear that the management had not taken any disciplinary action against the present complainant by way of punishment on account of any mis-conduct connected with the Industrial dispute referred to above and no order of dismissal, discharge or termination of his services had been made. His services stood automatically terminated as a result of the striking off his name from the muster roll due to his absence from duty for more than 8 days consecutively and without any proper authorisation, as per the standing orders of the company by which he was governed. In the circumstances it could not be said that the management had contravened the provisions of section 33 of the Act, and that being so, the present complaint under section 33-A of the Industrial Disputes Act, 1947 is not maintainable. The issue is accordingly decided against the complainant.

In view of my above finding on issue No. 1 no further proceedings are called for in the present complaint which stands to be dismissed as being no maintainable and I order accordingly. In the circumstances, there shall be no order as to costs.

Dated the 6th February, 1973.

O.P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 180, dated the 6th February, 1973.

Forwarded (four copies) to the Secretary to Government Haryana Labour and Employment Departments Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 6th February, 1973.

O.P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1406-4 Lab-73/5518.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act. No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Bhiwani Textile Mills, Bhiwani.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Application No. 5 of 1970 under Section 33-A of the Industrial Disputes, Act, 1947

Between

Shri Bhanwar Singh workman and the management of M/s Bhiwani Textile Mills, Bhiwani.

Present.—Shri Sagar Ram Gupta for the workman.

Shri B.R. Ghai and Shri Nathu Mal Jain for the management.

AWARD

This is a complaint under section 33-A of the Industrial Disputes Act, 1947. The facts relevant for the disposal of the complaint may shortly be stated as under :—

Shri Banwar Singh complainant was working in the Bhiwani Textile Mills, Bhiwani. The workmen of the said mills had raised an industrial dispute for bonus etc. (ID No. 65 of 1969) in which he was also a workman concerned. The management dismissed him from service vide order dated 8th April, 1970. Feeling aggrieved he brought this complaint on 5th May, 1970 with the following allegations :—

- (a) That he was President of the Textile Mazdoor Sangh, Bhiwani and a protected workman.
- (b) That he was a workman concerned in industrial dispute No. 65 of 1969.
- (c) That the management had dismissed him from service on 8th April, 1970 by levelling false charges against him without obtaining prior permission of this Tribunal and by way of victimisation on account of his trade union activities.
- (d) That the impugned order of his dismissal from service during the pendency of the aforesaid Industrial Dispute had been made in contravention of the provisions of section 33 of the Industrial Disputes Act, 1947.

With the above allegations in brief he prayed for necessary orders against the management as might be considered fit and proper in the circumstances of the case.

Notice of the complaint was given to the management. The allegation made by the complaint were controverted and it was not admitted that he was a protected workman. It was further urged that as a matter of fact he had committed serious acts of mis-conduct in launching a strike in the mills and physically preventing the other workers from joining their duties and by forcibly stopping Shri Jagan Nath Gupta P.A. to General Attorney of the Mills from going to him and by further threatening and assulting him when Shri Gupta tried to go inside the mills for which he was given separate charge sheets and the order of his dismissal from service was passed after holding the necessary enquiries in which the aforesaid charges were duly established.

My learned predecessor framed the following preliminary issue in the case.

Whether the applicant was a protected workman ?

Shri Bhanwar Singh complainant has not himself come into the witness box but his authorised representative Shri Hanuman Parshad, Secretary Textile Mazdoor Sangh, Bhiwani has made his statement with reference to certain documents including copy of the letter dated 26th January, 1970 addressed by Shri C.B. Kaushik to the management containing the names of the office bearers of the said union as a result of annual elections held on that date Exhibit W.W. 1/1 copy of the letter dated 7th February, 1970 addressed by the General Secretary of the Indian National Trade Union Congress, Haryana in this connection Exhibit W.W.1/2, copy of the letter dated 17th March, 1970 addressed by Shri Bhanwar Singh to the management Exhibit W.W.1/3, list of the 10 workers including Shri Bhanwar Singh sent to the management for recognition as protected workmen Exhibit W.W.1/4, reply dated 6th April, 1970 of the management Exhibit W.W.1/5, copy of another letter dated 7th April, 1970 addressed by the General Secretary of the union to the management Exhibit W.W.1/6.

On the other hand, the management has examined Shri Rohtas Kumar who was President of the Textile Mazdoor Sangh, Bhiwani in 1970 and claims to be President of the said union even there after. According to him the Indian Trade Union Congress had no authority to call the meeting of the members of his union and a reply to this effect was sent by him to the INTUC (Haryana) when notice for holding a meeting of the members of the union for fresh elections of the office bearers was received.

The case has been fully argued on both sides and I have given a very careful consideration to the facts on record and the case law cited by the learned representative of the parties. The law is well settled. The question whether particular workman is a protected workman is a question of fact and to establish this fact two conditions are essential :—

- (1) That a registered Trade Union connected with industrial establishment concern has made a request to the management in the prescribed manner for the recognition of a particular workman as a protected workman.
- (2) That the management has taken a positive action to recognise him as such.

The mere standing of a list of the office bearers of the union to the management with or without the request for their recognition as protected workman is not sufficient and no presumption can be drawn in favour of the workmen in this behalf even if the management does not send any reply to such communications. Recognition

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of protected workman is a positive act required to be done by the management and this privilege can not be claimed automatically because of the failure of the management to send a reply to the request of the union made in this connection. 1963-1-LLJ page 680 at 682 (S. C.) and some other authorities cited by the learned representative of the management in the instant case are quite clear on the point. Some evidence has no doubt been led in the case to show that under directions from the Indian National Trade Union Congress Haryana, Shri C. B. Kaushik had held fresh annual elections of the Textile Mazdoor Sangh Bhiwani and the names of the newly elected office bearers were also communicated by him to the management,—*vide* copy of the letter Exhibit W.W. 1/1 and the General Secretary of the INTUC Haryana had further sent the necessary intimation in this behalf to the Registrar of Trade Union Haryana Chandigarh. A perusal of the record would also show that under the signatures of Shri Bhanwar Singh as the newly elected President of the said union a list of the office bearers including his own name was sent to the management seeking their recognition as the protected workmen and the management had sent a reply on 6th April, 1970,—*vide* copy Exhibit W.W.1/5 objecting to the above request on account of the delay and asking for some further information regarding membership of the said union in the mills. It was further stated in the said letter that intimation had been received from the other members of the union protesting against elections of the office bearers. The General Secretary of the union sent a reply to this letter on 7th April, 1970 copy Exhibit W.W.1/6 contending that the fresh elections of the office bearers had been validly held and necessary intimation was sent to the management by Shri C.B. Kaushik who had conducted the elections and the management had no authority to entertain the objections to the elections of the office bearers from unauthorised persons. There after no further correspondence appears to have been exchanged between the parties and there is nothing on the record to indicate that the management had taken any step or done any positive act to recognise the present complainant as a protected workman. The complainant or the union also did not take any step to refer the matter to the Conciliation Officer as contemplated under rule 61 (4) of the Industrial Disputes Rules amended up-to-date.

It would thus appear from the facts on record, as discussed above, that Shri Bhanwar Singh present complainant had not been recognised as a protected workman and the management had not taken any positive step in this connection before the crucial date 8th April, 1970 when the impugned order of his dismissal from service was made.

The mere fact that the union had submitted the list of the workers including his own name for recognition as protected workmen to the management by itself was not sufficient to claim this privilege. Then the management had sent a reply to the communication received from the union in this behalf raising certain objections. It was also pointed out that some other workers belonging to the said union had protested against the elections of the new office bearers and Shri Rohtas Kumar the then President of the Textile Mazdoor Sangh, Bhiwani has also been examined as a witness in the case. The management had further enquired about the membership of the said union in the mills on the basis of which the number of protected workmen could be allotted. It is not for this Tribunal to go into the question of the validity or otherwise of the said elections of the new office bearers of the union. However, from the facts on record it does appear, as has been contented by the learned representative of the management that a dispute did exist between the parties with regard to the question of the recognition of the workmen belonging to the Textile Mazdoor Sangh Bhiwani as protected workmen and when the management had not taken any positive action in the matter the union was at liberty to seek its remedy by approaching the Conciliation Officer as contemplated under rule 61(4) of the Industrial Disputes Rules but for reasons best known to it this was not done.

The fact however remains that Shri Bhanwar Singh was not a protected workman on the relevant date, i.e., the date of the order of his dismissal from service. The issue is accordingly decided against him.

In view of my above finding on the preliminary issue no further proceedings are called for as the provisions of section 33(3) of the Industrial Disputes Act, 1947 are not attracted and the present complaint stands to be dismissed on this ground alone and I order accordingly. There will be no order as to costs.

Dated the 29th January, 1973.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal Haryana,
Faridabad.

No. 178, dated the 6th February, 1973

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 29th January 1973.

O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.